1944

File No. O. Pensions / 44

Legal Department

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Subject:— Opinions under the Pensions Act, 1871.

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Legal Department File No. ... Pensions/44.

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Office of the R.L.A.

Attention is invited to Article 149 of the Indian Limitation Act, 1908. A suit for recovery of arrears for the full period would be in time.

Id/- P.N.M. 27/1/44.

Remembrancer of Legal Affairs.

U.B.R. to Revenue Department No.731, dated 27th January 1944.

KAN/11-7.
4 c.

Office of the R.L.A.

It appears that one Rupsing was the original British grantee of the Bhil Nemnuk of Rs.300 per annum standing at Serial No.1986 of the Khandesh Cash Alienation List and Payabl from the Shirpur Sub-Treasury. The cash allowance is continuable hereditarily to the lineal male descendants in the male descent of the original grantee Rupsing Naik (see Memo. from the Commissioner, Central Division, No.C.A.L.A.O.85 dated 29-6-1939 and the letter from the Commissioner, Central Division, No.C.A.U.A.O. 141 dated 26-1-1944). The geneological tree of the original grantee's family is as follows:-

Rupsing.

Laxmansing.

Balsing (died on 24-1-1938) Widow	Devsing (dead)	Udesing (dead)	Sumar (dead)	Barikrao	Duman (dead)	Parbat
		Anandsing and 5 others.		Ravan		Lotan

Balsing Laxmansing the holder of the Bhil allowance died on 24th January 1938 leaving him surviving his widow Chima, his only brother Barikrao and twelve nephews. On the advice of the District Government Pleader, Khandesh the Collector ordered on 8th September 1939 that the name of Barikrao Laxmansing should be entered to the cash allowance. But Barikrao died on 12th April 1940 and his son Ravan applied to the Collector to have his name entered to the cash allowance. Anandsing Udesing also put forthe his claim to the cash allowance. On the advice of the District Government Pleader, Khandesh the Collector held that Anandsing Udesing was the

eldest male representative of the senior surviving branch of the original grantee's family and ordered his name to be entered to the cash allowance. On appeal to the Commissioner that order of the Collector was set aside and Ravan's name was substituted. Anandsing Udesing has now preferred an appeal to the Government alleging that as the ~~x~~ eldest male representative of the senior surviving branch of the original grantee he was the preferential heir. The questions for the consideration of the R.L.A. are :-

(1) Whether on the death of Baleasing Laxmansing, Barikrao was the proper and legal heir entitled to the cash allowance; and

(2) whether on the death of Barikrao, Anand Udesing or Ravan is the proper and legal heir entitled to the cash allowance.

2. Sub-rule (1) of rule 9 of the Rules framed under the Pensions Act, 1871, provides:-

"Claims relating to pensions or grants shall be disposed of in accordance with -

(a) the law, if any, for the time being in force applicable to such claims;

(b) the terms and conditions of the sanad or other documents if any, under which such pensions or grants are enjoyed;

(c) the rules and orders of Government for the time being in force if applicable to such claims."

No sanad has been issued in the present case nor are there any rules or orders of Government regulating the succession to the ~~x~~ cash allowance. It appears however from the entry in column 11 of the Cash Alienation List as quoted by the Commissioner,

Central Division that the cash allowance is to be continued hereditarily to the lineal male descendant in the male descent of Rupsing Naik. This rule of succession has not been challeng-ged by either side. Unfortunately this rule does not make it clear whether the principle of primogeniture or the principle of propinquity is to be applied. E.g. are grandsons in the senior branch to be preferred to sons in other branches. Fur-ther, the rule does not make it clear whether on Barikrao's death the question of succession is to be reopened from Lamman-sing or whether Barikrao is to be taken as the head of a fresh stock of descent. In the absence of a sanad and Government orders two criteira are suggested by the Commissioner, Central Division. The first is the law of succession among the Bhils and the second is the manner of succession in the case of Mewas Estate. In his letter at page 22 the Commissioner says that his order appointing Ravan is in his opinion the proper order "as being in consonance with x what appears to be from my own inquiries the custom amongst Bhils". That is supported by the Special Officer for Bhil uplift in his note on page 28: "In case of only brothers and nephews as survivors, the brothers will inherit the property equally. The nephews do not get any share of the deceased's estate, if there is any surviving brother of the deceased". Again in his letter at page 30 the Special Officer says: "The wife will succeed to the property and from her the daughter, if any. Failing both, the third brother will inherit in preference to the son of the second brother." It seems therefore that by this criterion the Commissioner's order is justified. Regarding the second criterion the Commis-sioner says: "We have, unfortunately, no [illegible]

rocedent of a Mewas Estate proceeding except in the direct .ine from father to son. But one point we are all agreed on .s that if the disputed succession in this case was a disputed succession to a Mewas Estate Anandsing Udesing would have been preferred to Barikarao. I do not know whether the Commissioner is correct in this opinion regarding Mewas Estates, or whether Government has passed any orders regarding those estates. The Commissioner seems to think that from the administrative point of view Anandsing Udesing is the better choice. However, if the criterion of succession among the Bhils is accepted the Commissioner 's order seems to be the correct one.

3. It is a matter for the administrative department to lay down whether the question of succession to Nemnuk allowances should be governed according to the general custom of succession prevailing among the Bhils or according to the order of succession laid down by Government for Mewas Estates or according to any other rule.

4. Unless the Government feels that from the administrative point of view one of the two applicants is definitely to be preferred, then it seems a case in which the Collector, if required, might issue a certificate under section 6 of the Pensions Act, 1871.

Id/- P.N.M. 11/5/44.

Remembrancer of Legal Affairs.

U.R. to R.D., No.3438, dated the 12th May 1944.

KAN/11-7.
4 c.